

20 October 2014

[NOTE: The following sample agreement is provided in response to requests the Board receives for examples of ADR agreements that may be suitable for use in ADR proceedings under the Board's "Notice Regarding Alternative Methods of Dispute Resolution." This sample is offered solely as an aid to the parties in focusing their thoughts on the ground rules that will best serve their interests in resolving a particular dispute. The Board recognizes that one of the strengths of the ADR process would be lost if the same procedural format were insisted on in every case. Thus, the Board by offering this sample does not intend to restrict the parties' discretion in tailoring the agreement to meet their particular needs. Paragraphs 2, 6 and 9, however, are key features of the mediation method of ADR.]

SAMPLE

AGREEMENT TO UTILIZE THE MEDIATION PROCEDURE
UNDER ADDENDUM II OF THE ASBCA'S RULES
(REVISED 21 JULY 2014): ALTERNATIVE METHODS OF DISPUTE RESOLUTION

THIS AGREEMENT is entered into by and between _____
(hereinafter "appellant") and the Department of _____ (hereinafter "the
government").

WHEREAS, appellant and the government entered into Contract No.
_____; and

WHEREAS, appellant filed with the Armed Services Board of Contract
Appeals (hereinafter the "ASBCA") an appeal under said contract; and

WHEREAS, said appeal is designated ASBCA No. _____; and

WHEREAS, ASBCA No. _____ involves claims by [appellant for _____]
[the government for _____] in the amount of \$ _____; and

WHEREAS, the parties wish to resolve the appeal by alternative dispute
resolution, specifically utilizing mediation; and

WHEREAS, the ASBCA is authorized to resolve disputes by alternative
disputes resolution under its Charter; and

NOW THEREFORE, the parties mutually stipulate and agree as follows:

1. Schedule. The ADR proceeding on the appeal is scheduled for _____ days(s), namely: _____, at the Board (or other agreed location).

2. Neutral. The Neutral's role will be to facilitate the parties' settlement efforts. The Neutral may meet with the parties either jointly or individually and to the extent necessary to foster a negotiated settlement of the dispute. The Neutral's recommendations are not binding on the parties. [Note: The Neutral will normally not participate further in the appeal if the parties' efforts are unsuccessful, unless the parties seek the continued involvement of the Neutral.]

3. Exhibits. [The parties should agree on what exhibits will be presented in the mediation.

4. Transcript. A transcript of the proceedings will not be prepared.

5. Agenda. The presentations of the parties will be informal and the rules of evidence are waived. The Neutral may, nonetheless, guide the presentation of evidence. [The parties should spell out how they wish to make their informal presentations and agree on time to be allotted to various phases of the process. It is often helpful for each party to submit a brief position paper (3 to 5 pages) sufficiently in advance of the proceeding for the Neutral to consider it in connection with the record agreed to by the parties.]

6. Participants. Each party will include among its representatives a principal with authority to settle the appeal.

7. Use of statements and documents. The admissibility of statements made or documents used in connection with the ADR proceeding will be governed by Federal Rule of Evidence 408.

8. Fees and expenses. Each party will bear its own fees and expenses, including but not limited to attorney and agent fees and compensation for witnesses, incurred incidental to the ADR proceeding.

9. Good faith. All participants in the ADR proceeding agree to act in good faith in all aspects of the proceeding with the view of resolving the dispute.

10. The Neutral shall have the same common law immunity as judges and arbitrators from suit for damages or equitable relief and from compulsory process to testify or produce evidence based on or concerning any action, statement, or communication in or concerning the ADR proceeding. The parties understand that

there is no attorney-client relationship between the Neutral and any party to this Agreement, and each party acknowledges that it will seek and rely on legal advice solely from its own counsel and not from the Neutral. The parties agree, on behalf of themselves and their counsel, that they will not call or subpoena the Neutral in any legal action or administrative proceeding of any kind to produce any notes or documents related to the ADR proceeding or to testify concerning any such notes or documents or his/her thoughts or impressions.

APPELLANT

GOVERNMENT AGENCY

By: _____

By: _____

Date _____

Date _____